U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 1
June 2016

FLORIDA HB 1133 (CH 99) ENACTED and EFFECTIVE March 24, 2016

Financing

Provides that an out-of-state business or out-of-state employee performing emergency-related work in Florida during a disaster response period (a period which begins 10 calendar days before the first day a state of emergency is declared and ends on the 60th calendar day after the end of the declared state of emergency) is not considered to have established a level of presence in Florida that would require that business to register, file, and remit state or local taxes or fees, or require that business to be subject to any registration, licensing, or filing requirements in Florida. Therefore, activities conducted by the out-of-state business are not subject to "reemployment assistance taxes" among other business taxes. Any business that remains in Florida beyond the disaster response period is subject to the state's normal standards for establishing presence or residency or doing business in the state.

IDAHO HB 396 (CH 126) ENACTED March 23, 2016
EFFECTIVE July 1, 2016

Appeals

Entitles parties to a claim to a written or digital notice of administrative or other deadline including, but not limited to, determinations, revised determinations, special redeterminations, decisions, and letters from the state Department of Labor requiring a response within a specified time.

IDAHO HB 397 (CH 158) ENACTED March 23, 2016
EFFECTIVE July 1, 2016

Appeals

Clarifies the appeals procedures concerning the financing of the (a) benefit payment by nonprofit organizations and governmental entities provisions, (b) mandatory transfers of experience rating accounts and federal conformity provisions regarding transfers of experience and assignment of rates, and (c) liability of successor provisions by providing that administrative determinations shall become final unless, within 14 days after notice as provided in Section 72-

1368(5), Idaho Code, an appeal is filed with the Department of Labor in accordance with the Department's rules. Appeal proceedings shall be in accordance with the provisions of Section 72-1361, Idaho Code.

Clarifies procedures concerning the determination and redetermination of a taxable wage rate by providing that a taxable wage rate determination becomes conclusive and binding upon the employer unless an application for redetermination is filed within 14 days of notice as provided in Section 72-1368(5), Idaho Code (previously, within 14 days after delivery or mailing of the notice thereof to his last known address). An employer's redetermination becomes final unless an appeal is filed within 14 days of notice as provided in Section 72-1368(5), Idaho Code (previously, within 14 days after delivery or mailing of the notice thereof to his last known address).

Provides that appeal proceedings concerning a determination of chargeability shall be in accordance with the provisions of Section 72-1361, Idaho Code.

Clarifies that an administrative determination of covered employment shall become final unless, within 14 days after notice as provided in Section 72-1368(5), Idaho Code, an appeal is filed with the Department setting forth the grounds for such appeal. Deletes the following sentence: A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.

Clarifies that within 14 days after notice as provided in Section 72-1368(5), Idaho Code (previously, within 14 days after the mailing of such notice to the applicant's last known address, or in the absence of such mailing, within 14 days after delivery thereof) the applicant may appeal to the Director, Department of Labor, for a hearing with regard to the rejection of any application for refund or credit for any amount paid, setting forth the grounds for such appeal.

Clarifies that a determination of amounts due of wages paid in covered employment due to an employer's failure to make a report becomes final unless the employer, within 14 days after notice as provided in Section 72-1368(5), Idaho Code (previously, within 14 days after the mailing of the notice to the employer's last known address, or, in the absence of such mailing, within 14 days after delivery thereof) files an appeal with the Department. Deletes the following sentence: The Director shall give written notice of the determination to the employer.

Clarifies that a jeopardy assessment will be issued when it has been determined that the collection of any amounts due from any covered employer will be jeopardized by delay and it shall become conclusive and binding upon the employer unless, within 14 days after notice as provided in Section 72-1368(5), Idaho Code, the employer files an appeal to the Department setting forth grounds for such appeal (previously, within 14 days after the mailing of such declaration to the last known address of such employer or in the absence of such mailing, within 14 days after personal delivery upon the employer.)

Amends Section 72-1361, Idaho Code, which contains language concerning appeals to the Department and to the Industrial Commission by providing that upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of

rate of contribution, determination of coverage, determination of chargeability, jeopardy determination, cost reimbursement determination, determination of mandatory transfer of experience rating, or determination of successor liability, the Director may transfer the appeal directly to an appeals examiner pursuant to Section 72-1368(6), Idaho Code, or he may issue a redetermination affirming, reversing, or modifying the initial determination. (Amendment added - cost reimbursement determination, determination of mandatory transfer of experience rating, or determination of successor liability - to the provision.)

Note: Section 72-1368(5), Idaho Code, in part, provides that a notice shall be deemed served if delivered to the person being served, if mailed to his last known address, or if electronically transmitted to him.

IDAHO HB 485 (CH 280) ENACTED March 24, 2016 EFFECTIVE July 1, 2016

Monetary Entitlement

Deletes obsolete language for determining the taxable wage rates for calendar years 2005 and 2006. Deletes obsolete language for establishing the maximum weekly benefit amount for calendar year 2005.

Amends the formula determining the base tax rate, so that the base tax rate shall not be less than 0.6 percent (previously, not less than 0.63 percent) and shall not exceed 3.4 percent (previously, not exceed 3.364 percent).

Provides that the maximum weekly benefit amount shall be 55 percent of the state average weekly wage paid by covered employers for the preceding calendar year. (Previously, for calendar year 2006 and the calendar years thereafter, prior to December 31 of each year, the maximum weekly benefit amount was determined based on a table using a percentage of the state average weekly wage paid by covered employers for the preceding calendar year and the base tax rates. From the highest to the lowest, with base tax rates ranging from 0.630 percent to less than 0 .840 percent, the average weekly wage percentage was 60 percent, and with base tax rates ranging from 3.045 percent to less than 3.360, the average weekly wage percentage was 52 percent.)

Provides that maximum weeks of entitlement are based on a sliding scale of seasonally adjusted unemployment rates for the state for a minimum of 10 weeks to a maximum of 26 weeks depending on the unemployment rate in effect for the months of February, May, August, and November. (Previously, the maximum weeks of entitlement were based on the ratio of total base period earnings to highest quarter earnings, ranging from 1.25 to 1.60 qualifying for 10 weeks and ranging from 3.5601 to 4.00 qualifying for 26 weeks.)

INDIANA HB 1344 (CH 171) ENACTED March 23, 2016 EFFECTIVE March 23, 2016, or as otherwise noted

Administration

Repeals the provisions creating the Indiana Unemployment Insurance Board. Abolishes the Indiana Unemployment Insurance Board, and transfers all powers, duties, agreements, liabilities, and other assets of the board to the Department of Workforce Development on April 1, 2016. Requires the board and the Department to cooperate to provide for the orderly transition beginning April 1, 2016, and expiring January 1, 2017. All references to the Indiana Unemployment Insurance Board are henceforth considered references to the Department.

Nonmonetary Eligibility

Provides, effective July 1, 2016, that not later than the fourth week after the week an individual begins receiving benefits, the individual must be scheduled to visit and receive an orientation to the services available through a one stop center in order to maintain eligibility to receive benefits. The individual's orientation must be completed not later than the sixth week after the week the individual begins receiving benefits, unless the department waives the requirement only when one of the following applies to the individual:

a) The individual is attending training or retraining approved by the department.
b) The individual is a job-attached worker with a specific recall date that is not more than 60 days after the individual's separation date.
c) The individual is using a hiring service, a referral service, or another job placement service as determined by the department.
d) The individual is receiving a supplemental unemployment benefit under a contract or agreement.

MASSACHUSETTS HB 4116 (CH 70) ENACTED and EFFECTIVE April 1, 2016

Administration

Removes the circumstance under which the Department of Labor and Workforce Development shall disclose unemployment insurance information necessary to the Commissioners of Transitional Assistance, Revenue, Veterans' Services, Medical Security, and Industrial Accidents for the performance of their official duties. Adds the following two groups to which the Department shall disclose unemployment insurance information: (1) the heads of the Departments of Career Services, Transitional Assistance, Revenue, Veterans' Services, Office of Medicaid, and Industrial Accidents for the purpose of performing their official duties; and (2) to the heads of governmental agencies who are partners in the Workforce Innovation and Opportunity Act (WIOA) for the purpose of complying with performance reporting requirements of WIOA.

MINNESOTA SB 1006 (CH 82) — ENACTED March 24, 2016; EFFECTIVE March 25, 2016

Extensions and Special Programs

Establishes an iron ore mining and related industry extended unemployment benefits program retroactive from August 31, 2015.

Provides extended unemployment benefits to workers in iron ore mining and related industries who were laid off due to lack of work after March 1, 2015. Eligible applicants are eligible to receive benefits for any week through the week ending June 25, 2017.

Provides that an applicant for extended benefits must meet the same requirements as for regular unemployment benefits under Minnesota Statutes, must have the majority of wage credits come from an iron ore mining or related industry employer, and also must have exhausted the maximum amount of regular unemployment benefits.

Provides that, if an applicant qualifies for the new regular benefits account after exhausting the maximum amount of regular unemployment benefits on the previous benefit account, the applicant must establish a new regular benefits account. The applicant must first request benefits under whichever program, either the extended unemployment benefits or the new regular benefit account, has greater weekly benefits. The applicant is ineligible for the program with lower weekly benefits until the maximum amount of benefits available under the first program has been exhausted.

Provides that extended benefits paid may not be used to compute the future unemployment tax rate of a taxpaying employer nor charged to the reimbursing account of governmental or nonprofit employers.

Provides that an applicant who is eligible for trade readjustment allowance benefits is ineligible for extended unemployment benefits under this program.

MINNESOTA SB 2891 (CH 81) — ENACTED March 24, 2016; EFFECTIVE December 31, 2015

Financing

Establishes the following unemployment insurance tax limits:

a) Provides that if the trust fund balance on December 31 of any calendar year is 4 percent or more above the amount equal to the high cost multiple of 1.0, future unemployment taxes must be reduced by any amounts over 1.0, in order to avoid further accumulation of reserves. The amount of tax reduction for any taxpaying employer is the same percentage of the total amount above 1.0 as the percentage of taxes paid by the employer during the calendar year is of the total amount of taxes that were paid by all nonmaximum experience rated employers during the year.
b) Excludes employers that were at the maximum experience rating for the year or high experience rating industry employers (such as employers engaged in construction; sand,

gravel, or limestone mining; manufacturing of concrete products; or road building and repair) from the reduction.

c) Provides that the tax reduction applies to taxes paid between March 1 and December 15 of the year following the December 31 computation.
d) Provides that the amount equal to the average high cost multiple of 1.0 on December 31, 2012, must be used for the calculation under paragraph a). Notwithstanding paragraph c), the tax reduction resulting from the application of this paragraph applies to unemployment taxes paid between July 1, 2016, and June 30, 2017.

OREGON HB 4086 (CH 27) ENACTED and EFFECTIVE March 8, 2016

Financing

Charges an employer for temporary lockout benefits in the manner provided for charging employers for regular benefits.

Monetary Entitlement

Provides that an individual is eligible to receive temporary lockout benefits (equal to the weekly benefit amount of the individual's most recent unemployment benefit claim) for a week if:

a) Prior to the week of benefits, the individual has received all of the regular benefits available to the individual;
b) The individual is not eligible for any other benefits; and
c) At the time of filing an initial or additional claim, the individual is unemployed due to a lockout at the individual's place of employment.

Provides that the maximum temporary lockout benefit amount is 26 times the weekly benefit amount of the individual's most recent unemployment benefit claim.

Provides that notwithstanding the above paragraphs, temporary lockout benefits otherwise payable may not be paid for weeks that begin after the week in which the lockout ends.

Provides that the forgoing paragraphs apply to weeks that begin on or after March 8, 2016, except with respect to individuals who are unemployed due to a lockout on March 8, 2016, and who are otherwise eligible to receive temporary lockout benefits, the foregoing paragraphs apply to weeks that begin before, on, or after March 8, 2016.

Provides that temporary lockout benefits that are retroactively payable must be claimed by the eligible individual in the manner for claiming regular benefits within 60 days after March 8, 2016 (May 11, 2016).

OREGON SB 1544 (CH 18) ENACTED and EFFECTIVE March 3, 2016

Nonmonetary Eligibility

Increases the maximum number of weeks of attendance in an instructional program for apprentices for which an unemployed individual participating in an apprenticeship program would be eligible for unemployment insurance benefits. (Applicable to weeks beginning on or after March 3, 2016.)

TENNESSEE HB 1552 (CH 166) ENACTED April 12, 2016
EFFECTIVE July 1, 2016, or as otherwise noted

Financing

Provides that the taxable wage base will be adjusted in accordance with existing provisions adjusting the taxable wage base depending on the trust fund balance. If the balance is below the trigger level at the subsequent reading of the unemployment trust fund balance, the taxable wage base will not change. The adjustment of the taxable wage base, if any, based on findings made and published on June 30, will be effective on January 1, of the following year. The adjustment of the taxable wage base, if any, based on findings made and published on December 31, will be effective on July 1 of the following year.

Monetary Entitlement

Changes the implementation date of the seasonal employment provisions from July 1, 2016, to July 1, 2020, and revises certain provisions.

Redefines "seasonal employer" to mean an employer that customarily employs workers only during a regularly recurring period of 26 consecutive weeks or less within a calendar year and has been determine to be a seasonal employer by the Department of Labor and Workforce Development. (Previously defined "seasonal employer" as one that, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year.)

Deletes the provision indicating that any successor to a seasonal employer will be deemed a seasonal employer, unless the successor requests cancellation of the seasonal employer status within 120 days after the acquisition.

Requires that applications for a seasonal employer determination be submitted between September 1 and October 31 of each year. (Previously, required applications for a seasonal determination to be made at least 30 days prior to the beginning date of the period of production operations for which a determination is requested.)

Requires applicants to have an experience rating, have no unpaid liability, and not be delinquent in submitting any premium and wage reports or required payments in the 4 quarters preceding the application.

Specifies that a determination of seasonal employer status will be effective January 1 through December 31, and will not have retroactive effect. The Department will determine the employer's active seasonal period.

Provides that wages from seasonal employment will not be included in the base period for any week of unemployment commencing during the inactive seasonal period between two successive active seasonal periods, if the claimant performs the services in an active seasonal period and a reasonable assurance is provided that the claimant will perform the service for the seasonal employer during the following active seasonal period. If benefits are denied to a seasonal worker for any week solely as a result of this provision and the seasonal worker is not offered an opportunity to perform in the next active seasonal period for which there was a reasonable assurance of employment, the seasonal worker will be entitled to retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits. Wages from seasonal employment will be included in the base period for any week of unemployment commencing during the employer's active seasonal period. (Previously, benefits based on seasonal employment were payable to a seasonal worker in the employment of a seasonal employer for weeks of unemployment that occur during such employer's active period of seasonal pursuit. Benefits are not paid based on services performed in seasonal employment for any week of unemployment beginning after July 1, 2016, that begins during the period between two successive normal active periods of seasonal pursuit to any seasonal worker if that seasonal worker performs the service in the first of the normal active periods and if there is a reasonable assurance that the seasonal worker will perform the service for a seasonal employer in the second of the active periods. If benefits are denied to a seasonal worker for any week solely as a result of these provisions and the seasonal worker is not offered an opportunity to perform in the second normal active period for which reasonable assurance of employment had been given, the seasonal worker is entitled to a retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits. The benefits payable to any otherwise eligible seasonal worker are calculated in accordance with these provisions for any benefit year which is established on or after the beginning date of a determination by the Department that an employer is a seasonal employer if such seasonal worker was employed by the seasonal employer during the base period applicable to such benefit year, as if such determination had been effective in such base period.)

<u>Overpayments</u>

Provides that any person who has received unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation, after a determination by the Commissioner of the Employment Security Law that such a violation has occurred, must repay the amount of benefits received. Penalties in such situations are as follows:

A. The Commissioner will assess a penalty equal to 15 percent of the overpaid benefits, which monies are deposited into the state's unemployment compensation fund; and
B. For overpayments made prior to July 1, 2016, the Commissioner will further assess a penalty equal to 7.5 percent of the overpaid benefits; and
C. For overpayments made on or after July 1, 2016, the Commissioner will further assess a penalty equal to 15 percent for the first instance of overpaid benefits. The Commissioner will further assess a penalty equal to 35 percent for the second and each subsequent instance of overpaid benefits. The first instance means all consecutive claim weeks of unemployment benefits paid within a benefit year to any person when such benefits were received by knowingly misrepresenting, misstating, or failing to disclose any material fact.
D. Monies collected by penalties set out in (B) and (C) will be used to defray the costs of deterring, detecting, or collecting overpayments.

(Previously, assessed a penalty equal to 15 percent of the overpaid benefits to be deposited into the state's unemployment compensation fund and further assessed a penalty equal to 7.5 percent of the overpaid benefits to be used to defray the costs of deterring, detecting, or collecting overpayments.)

UTAH HB 116 (CH 370) — ENACTED March 29, 2016; EFFECTIVE May 9, 2016

Coverage

Defines "federal executive agency" to mean an executive agency as defined in 5 U.S.C. Section 105 of the federal government.

Provides that, in determining whether two or more persons are considered joint employers, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law or adopted by statute or rule.

Defines "franchise", "franchisee", and "franchisor" to mean the same as those terms are defined in 16 C.F.R. Section 436.1.

Provides that a franchisor is not considered to be an employer of: (i) a franchisee or (ii) a franchisee's employee.

Provides that, with respect to a specific claim for relief made by a franchisee or a franchisee's employee, a franchisor is considered to be an employer of a franchisee or a franchisee's employee under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

WEST VIRGINIA SB 558 (CH 248) — ENACTED March 3, 2016; EFFECTIVE March 1, 2016

Financing

Provides that the Governor may borrow funds from the Revenue Shortfall Reserve Fund (previously, the Revenue Center Construction Fund) for deposit into the state's Unemployment Compensation Fund, which may only be used to pay benefits.

Provides that the amount of funds borrowed and outstanding may not exceed $50 million (previously, $20 million) at any one time, or the amount the Governor determines is necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of $50 million (previously, $20 million) whichever is less. Unless it is projected that the state's Unemployment Compensation Fund will be less than $50 million (previously, $20 million) at any time during the next 30 days, funds may not be borrowed.

Provides that borrowed funds shall be repaid from funds on deposit in the state Unemployment Trust Fund in excess of $50 million (previously, $20 million) or from other funds legally available for such purpose without interest and redeposited to the credit of the Revenue Shortfall Reserve Fund within 180 days of their withdrawal. No amounts may be borrowed after September 1, 2017 (previously 2011).

WISCONSIN SB 422 (CH 203) — ENACTED March 1, 2016; EFFECTIVE March 3, 2016

Coverage

Provides that a franchisor is not considered an employer of a franchisee or of an employee of a franchisee, unless the franchisor has agreed in writing to assume that role or the Department of Workforce Development has found that the franchisor has exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised.

WYOMING HB 54 (CH 29) — ENACTED March 3, 2016; EFFECTIVE July 1, 2016

Overpayments

Provides that repayment of benefits to which individual was not entitled may also be offset through the treasury offset program of the United States Treasury.